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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,612	07/16/2003	Vincent De Laforcade	05725.1226-00000	6532
22852 7590 12/08/2009 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 12/08/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/619,612	<b>Applicant(s)</b> DE LAFORCADE ET AL.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, 78-83 and 111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Disposition of Claims: Claims pending in the application are 1,3,6,9,10,12,13,16,18-23,39,41,44-48,50,52,54,56-62,64,65,68,69,71,72,76,78-83 and 111.

### **DETAILED ACTION**

Applicant's response filed 8/13/09 has been entered and carefully considered. Arguments regarding the 35 U.S.C. 103 (a) have not been found to be persuasive, therefore, claims 1, 3, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, 78-83 and 111 are rejected under the same ground rejection as set forth in the office action mailed 4/13/09.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 9, 10, 12, 13, 16, 18-23, 39, 44-48, 50, 52, 54, 56-62, 65, 68, 69, 71, 72, 76, 78-83, 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furusawa.

With regard to claims 1, 6, 12, 13, 16, 39, 44-46, 50, 52, 54, 62, 65, 71, 72, 76, 111, Furusawa discloses a single piece applicator nozzle (1) comprising attachment portion (at 3) configured to attached the nozzle to a receptacle (14) containing a product, an arrangement of at least four teeth (8, 12) disposed in a single row (see fig. 1) comprising first and second end teeth (8), at least two intermediate teeth (8) positioned directly next to one another in the row defining a channel (10) extending lengthwise along the intermediate teeth and being configured to be placed in flow

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communication with product contained in the receptacle, the two intermediate teeth being between the first and second end teeth, the channel opening on an exterior of the at least one tooth (at fig. 3); Furusawa also discloses the end teeth (12) being solid devoid of outlet apertures; the channel opening lengthwise relative to the intermediate tooth (see fig. 1); the channel opening on an exterior of the at least one tooth via at least one outlet aperture (9), wherein the outlet aperture opens into a groove (11) which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth (see fig.3) and the channel opening laterally on the exterior of the tooth (8, fig. 2) facing in a direction of an adjacent tooth (fig. 1); wherein the nozzle does not have any row of teeth other than a single row of teeth formed by the arrangement of at least four teeth, wherein the arrangement being made of a single molded piece (see translated abstract). Furusawa fails to show the first and second teeth are the only teeth in the row devoid of any outlet aperture. It would have been an obvious matter of design choice to one having an ordinary skill in the art at the time the invention was made to construct two teeth with devoid of any outlet aperture instead of four teeth as taught by Furusawa, since such modification is old and provides the equivalent effect and function to the device. In regard to claims 9-10, 18-22, 47-48, 56-60, 68-69, 78-82, Furusawa shows the attachment portion comprising screw threading configured to engage with screw threading on a neck (at 5 and 2, fig. 1) of the receptacle and the product contained within the receptacle being a hair product (paragraph 001, translated version). In regard to claims 23, 61, 83, it would have been obvious to one having an ordinary skill in the art at the time the invention

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was made to construct a deformable material for the receptacle, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 3, 41, 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furusawa in view of Yuzuhara.

Furusawa discloses the essential claimed invention as discussed above except for the channel opens on an exterior of the at least one intermediate tooth via two outlet aperture facing in opposite directions. Yuzuhara discloses a single piece applicator nozzle (8) comprising attachment portion (at 62) configured to attached the nozzle to a receptacle (4) containing a product, an arrangement of at least four teeth (102) disposed in at least one row (see fig. 1) comprising first and second end teeth (102b, 102c), at least two intermediate teeth (102b, 102c) defining a channel (114) extending lengthwise along the intermediate teeth, wherein the channel opens on an exterior of the at least one intermediate tooth via two outlet aperture facing in opposite directions (at 116 on both sides of each tooth, fig. 4).

### ***Response to Arguments***

In response to applicant's argument that the two tooth arrangement provides benefits over the four tooth arrangement, however, there is no evidence of the criticality of the claimed two tooth arrangement; therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was to construct the two teeth

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with devoid of any outlet aperture instead of four teeth as taught by Furusawa to obtain predictable result, such as enhancing the application of the product.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732